

Internal Revenue Service
District Director

[REDACTED]

*Case closed by reviewer: no protest
rec'd. 7/5/95* [REDACTED] *EOIR*
Department of the Treasury

P.O. Box 250
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:
EP/EO

Employer Identification Number:

Date: **MAY 18 1995**

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and other wise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

EA 5/10/95 DP 5/16/95 TMC 5/16/95

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b) (2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

Enclosure I
Reasons for Proposed Denial of Exempt Status

[REDACTED]
You were incorporated [REDACTED] under the laws of the State of [REDACTED].

Your stated purposes in pertinent part are:

"...exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3)..."

Membership in your organization consists of individuals age 9-18. The individuals must audition before impartial dance experts and/or the Artistic Director in order to determine their qualifications for membership. The Performing Member Rules and Regulations states the following pertinent information:

Article II
Finances/Fund-raisers

- A. [REDACTED] Company Members will not be required to pay a membership fee.
- B. Performing Members and their parents will be required to participate in all fund-raising projects.
- C. All [REDACTED] Members are responsible for all costume expenses related to the casting assignments.
- D. There is a seven (7) day grace period from due date in which to turn in a profit margin of any fund-raiser.
- E. [REDACTED] monies should always be given to the Treasurer. Money should be in an envelope and labeled with the following information:
 - [REDACTED] members name
 - Name of fund-raiser that money applies to (Poinsettia Sale, Easter Candy Sale, etc.)
 - Date

Article III
Classes, Performances, Rehearsals

- A. [REDACTED] Members agree to take at least (2) ballet classes, one (1) jazz and one (1) tap class per week at [REDACTED].

Enclosure I
Reasons for Proposed Denial of Exempt Status

[REDACTED]

You are closely associated with [REDACTED], a for profit facility. You state in your letter received [REDACTED], that "[REDACTED] is an instructor at [REDACTED] and that [REDACTED] is the president of [REDACTED]." Other information in the file indicates that [REDACTED] is also the owner of [REDACTED].

The activities of your organization consist of assisting your members in state, regional and national dance competitions. You provided the following breakdown of a members time:

4 hrs wk technical classes/46 wks
3 hrs wk prod. rehearsals/46 wks

322 HRS TLT
166 hrs competitive dance
36 hrs of exhibition dance

524 HRS -----YEAR-----

Your income is derived from Fund-raisers, sponsorships, contributions and member fees.

Expenses include competition fees, workshop/convention fees and hotel costs. Your schedule of projected expenditures reflect a yearly cost to each member of more than \$[REDACTED]. In addition, the projected expenditures indicates all money received via Fund-raisers will stay in [REDACTED] general account, members will receive credit for their deposits under their name and members overpayments will apply to their trip fee.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations provides that the words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will no be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Enclosure I
Reasons for Proposed Denial of Exempt Status

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one of more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that is not organized or operated for the benefit of private interests such as designated individuals, the creators, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 65-2, 1965-1 C.B. 227, describes an organization which was organized and operated for the purpose of teaching a particular sport to children. It's programs and facilities are available to any child in the community who desires to participate. It furnishes free instruction, equipment and facilities to the children of the community. Accordingly, its activities are charitable within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 80-215, 1980-2 C.B. 174, describes an organization that is formed to develop, promote, and regulate a sport and promote competition for junior players in the state. The organization organizes local and state-wide competitions for individuals under 18 years of age, promulgates rules, organizes officials, presents seminars for players, coaches, and referees, provides a framework for protest, appeals, and procedures, and encourages the growth of the sport throughout the state. The ruling holds that the organization's activities directed to individuals under age 18 years of age combat juvenile delinquency and promote the education of children. Therefore, the organization qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 69-175, 1969-1 C.B. 149, describes an organization formed by the parents of pupils attending a private school exempt under section 501(c)(3) of the Code. All control over the organization rests in the parents. The organization provides bus transportation to and from the school for those children whose parents belong to the organization. The ruling states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, under the circumstances described, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves private rather than public interest. Accordingly, the organization does not qualify for exemption.

Enclosure I
Reasons for Proposed Denial of Exempt Status

[REDACTED]

The owner and instructor of [REDACTED] would have a personal and private interest in the activities of the organization. Accordingly, [REDACTED] and [REDACTED] would be a "private shareholder or individual" within the meaning of section 1.501(a)-1(c) of the Income Tax Regulations.

[REDACTED] and its owner [REDACTED] would profit from the activities of the organization since all members must agree to take dance classes at [REDACTED]. The members are required to pay for the dance classes, but they may offset the costs by providing demonstration skills to the younger dancers. Accordingly, the formation of your organization serves the private interests of your creators and the benefit to your members appears to be insubstantial.

You are not as described in Rev. Rul. 65-2 and 80-215 since your benefits are not offered to all children regardless of their participation in fund-raising or association with [REDACTED]. Only those who participate in fund-raising, deposit funds into individual accounts and are associated with [REDACTED] derive benefits from your activities.

You appear to be the type of organization described in Rev. Rul. 69-175. You have been created and are largely controlled by a for profit entity. You provide a cooperative service for parents in an effort to help pay the substantial costs of their children's dance activities.

Accordingly, we conclude that you are not operated exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Code. Your operations result in undue private benefit to your members and inurement to [REDACTED]. Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.